# IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

C 08-1281 CRB (PR)
DER TO SHOW CAUSE

Petitioner, a state prisoner incarcerated at the Correctional Training Facility in Soledad, California, has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging the California Board of Parole Hearings' ("BPH") August 29, 2006 decision to deny him parole.

### **BACKGROUND**

In 1987, petitioner was convicted of second degree murder in the Superior Court of the State of California in and for the County of Fresno and sentenced to an indeterminate term of 15 years to life with the possibility of parole.

Petitioner was denied parole until August 5, 2004, at which time the BPH finally found him suitable for parole and granted him a parole date. Shortly thereafter, the governor reversed the BPH's decision, however.

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Petitioner received a subsequent parole suitability hearing on August 31, 2005; but the BPH changed course and found him not suitable for parole and denied another hearing for one year. On August 29, 2006, petitioner received a subsequent hearing and again was denied parole, but this time for three years. He challenges the August 29, 2006 decision.

On January 23, 2008, the Supreme Court of California denied petitioner's challenge to the BPH's August 29, 2006 decision.

### **DISCUSSION**

## A. Standard of Review

This court may entertain a petition for a writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a).

It shall "award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." <u>Id.</u> § 2243.

## B. <u>Legal Claims</u>

Petitioner seeks federal habeas corpus relief from the BPH's August 29, 2006 decision finding him not suitable for parole, and denying him a subsequent hearing for three years, on the ground that the decision does not comport with due process. Among other things, petitioner contends that the decision is not supported by some evidence in the record having an indicia of reliability. Liberally construed, petitioner's claims appear colorable under § 2254 and merit an answer from respondent. See Sass v. Cal. Bd. of Prison Terms, 461 F.3d 1123, 1127-29 (9th Cir. 2006) (finding that refusal to set parole date for prisoner with 15-to-life sentence implicated prisoner's liberty interest in release on parole

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which cannot be denied without adequate procedural due process protections). Biggs v. Terhune, 334 F.3d 910, 914-15 (9th Cir. 2003) (same).

#### CONCLUSION

For the foregoing reasons and for good cause shown,

- 1. The clerk shall serve by certified mail a copy of this order and the petition and all attachments thereto on respondent and respondent's attorney, the Attorney General of the State of California. The clerk also shall serve a copy of this order on petitioner.
- 2. Respondent shall file with the court and serve on petitioner, within 60 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued. Respondent shall file with the answer and serve on petitioner a copy of all portions of the state trial record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.
- 3. If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the court and serving it on respondent within 30 days of his receipt of the answer.

SO ORDERED.

DATED: <u>July 21, 2008</u>

CHARLES R. BREYER United States District Judge

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# UNITED STATES DISTRICT COURT FOR THE

#### NORTHERN DISTRICT OF CALIFORNIA

RAGHBIR SINGH,	Case Number: CV08-01281 CRB
Plaintiff,	CERTIFICATE OF SERVICE
v.	
B. CURRY et al,	
Defendant.	/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 21, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Raghbir Singh D-54338 CTF-Soledad CW-308-L P.O. Box 689 Soledad, CA 93960

Attorney General's Office 455 Golden Gate Avenue Ste 11000 San Francisco, CA 94102

Dated: July 21, 2008

Richard W. Wieking, Clerk By: Barbara Espinoza, Deputy Clerk